

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

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OFFICE OF THE SECRETARY

In the Matter of)	
)	
Satellite Delivery of Network Signals)	CS Docket No. 98-201
to Unserved Households for Purposes)	RM No. 9335
of the Satellite Home Viewer Act)	RM No. 9345
)	
Part 73 Definition and Measurement)	
of Signals of Grade B Intensity)	

To: The Commission

COMMENTS OF FOX BROADCASTING COMPANY

Fox Broadcasting Company ("FBC"), by its attorneys, submits the following comments in response to the Notice of Proposed Rulemaking in the captioned proceeding. 1/

The dual purpose of the Satellite Home Viewer Act is to seek to make broadcast network programming widely available to the American public, while making certain that our system of free over-the-air television is preserved. That system relies on the ability of local stations to enjoy the exclusive right to air programming within a local market in order to compete for viewers and advertising revenue. The Commission's rules recognize this reality. 2/

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1/ FCC 98-392 (Nov. 17, 1998) (the "NPRM").

2/ See, e.g., 47 C.F.R. §§ 76.92 (protecting local network stations' exclusive rights to programming by empowering them to prevent the importation of distant network signals by cable systems); 76.151 (protecting the exclusive rights of local stations to syndicated programming by empowering them to prevent the importation of such programming by cable systems).

Our existing free over-the-air advertiser supported broadcast system is structured so as to encourage local stations to respond aggressively to competition by producing and acquiring better programming than their competitors, while offering first rate local news and local public service information, such as local weather, sports, community affairs and emergency announcements. However, when a local station loses viewers to a distant station that is offering essentially the same network programming, that local station's ability to compete for viewers and attract advertising revenue is undermined, threatening, in turn, the very underpinnings of free over-the-air broadcasting.

In that regard, it is the clear intent and preference of Congress, as reflected in the language of the Satellite Home Viewer Act ("SHVA"), that households within a local market should receive network programming from the local television stations licensed to operate in that market. Only when a household is not served by a signal of Grade B intensity from a local network affiliate did Congress authorize the importation to that household of a distant network station.

The FCC should not upset this delicate balance crafted by the Congress, nor would it be in the public interest to do so. However, the Commission should take steps to make certain that SHVA is implemented in a manner that accurately reflects the intent of Congress that even those Americans who live rural areas should have access to network broadcast service and no local station's ability to provide unique, localized service should be jeopardized.

First, we feel most strongly that the Commission should maintain the current definition of a Grade B intensity signal. ^{3/} It is a definition that has withstood the test of time and has been embraced by the viewing public. A Grade B intensity signal ensures that a household will receive a viewing experience that is comparable to that provided by cable systems and that is more reliable than DBS service.

Second, the Commission can modify the historical methodology it currently uses to predict whether a household is at a location that can receive a signal of at least Grade B intensity (*i.e.*, traditional Grade B contour) by taking steps to implement the most accurate prediction model available. A better prediction model than R-6602 would materially reduce the need for costly and burdensome signal strength field tests.

Third, when signal strength tests are necessary, the Commission should endorse a more practical and cost-effective way to resolve disputes in a manner that advances the consumer's interest.

I. "LOCAL-INTO-LOCAL" DELIVERY BY SATELLITE CARRIERS AND DIGITAL BROADCAST SERVICE ARE PROMISING WAYS TO HELP ENSURE THAT AMERICAN FAMILIES WILL CONTINUE TO RECEIVE LOCAL STATIONS WELL INTO THE NEXT MILLENNIUM

In the not too distant future, satellite subscribers will have the means to receive local network signals by "local-into-local" satellite retransmissions. In addition, satellite subscribers will soon have widespread access to the new and exciting digital

^{3/} Because other parties are expected to present arguments regarding the FCC's jurisdiction over these issues, as they did in response to the Petitions for Rulemaking in this proceeding, FBC does not address the issue of jurisdiction.

broadcast television service, which can be incorporated into set-top boxes that integrate local signals into satellite carriers' service packages. These market developments, together with the proposals on Grade B prediction and measurement in these Comments, will ensure that the twin goals of the SHVA are met: promoting American families' access to broadcast television stations and, at the same time, preserving the vitally important system of free local broadcast television in this country.

II. THE CURRENT DEFINITION OF "GRADE B" SERVICE SHOULD BE RETAINED

FBC urges the Commission to retain its current Grade B definition for purposes of defining "unserved households" under the SHVA. Grade B service -- a concept developed by the FCC -- is defined in field strength and was originally developed using standard assumptions about the size of receiving aerials, height above ground of the aerials, the down-lead (or lead-in) loss, the sensitivity of the television receiver, and the acceptability of a certain amount of "snow" in the picture. These parameters, called "planning factors", form the basis for the design of the NTSC RF environment.

An off-air signal of Grade B intensity under the current standard presents a viewing experience that is at least equal to cable service. Today, a Grade B signal produces a quite viewable picture, and there is no good reason for the FCC to change this proven definition.

Moreover, with improvements in television receiver equipment, the benchmark Grade B signal today results in a picture much improved from the picture

that resulted from a Grade B signal at the time the Grade B standard was adopted. 4/ Receiving aerials are available today from retail outlets that meet or exceed the standards for aerials used to develop the Grade B standard. The availability of these aerials in the marketplace is evidence that viewers have adjusted successfully to receive local broadcasts and feel that a Grade B picture represents a perfectly adequate viewing experience. Thus, not only the broadcast industry, but also the public, has become accustomed to the Grade B standard. 5/

The current Grade B definition has become an integral element of the regulatory regime for the television industry. Stations have come to expect that their predicted Grade B signal, as it has always been defined by the FCC, will establish the area in which they serve viewers. Conversely, areas outside the range of the Grade B signal are considered to be beyond a station's service area. Television broadcast stations also rely on predictions based on the established Grade B definition to define

4/ In particular, the Commission's efforts with respect to improving standards for receiver performance have resulted in significant improvements in the noise figure of television receivers.

5/ Much has been made by the DBS industry of location as a variable in predicting a Grade B signal. The location variable defines the percentage of sites tried that will meet or exceed a given signal strength. For instance, 50% location variability means that at the extreme outer edge of the coverage area, for every hundred sites tried, at least 50 of them will meet or exceed the target signal strength. Even at the extreme outer edge of the coverage area, any given home has many sites within it. In many cases, moving the antenna just a few feet can make a marked improvement in its reception. In other words, with each home having many possible sites, the chance of failure drops materially. Indeed, an experienced antenna installer would know which areas present challenges and which ones do not. For instance, while the sides of the house away from the transmitter might not work, other sides could. Just as technicians expertly locate DBS antennas to ensure reception, so can these technicians apply their skills to locating a television receiving antenna on the roof.

the area that their advertisers will reach. 6/ And stations buy programming with the general expectation that they will be the exclusive distributor of that programming within their predicted Grade B service area. The traditional Grade B definition has thus become a cornerstone of the advertising, programming and promotional practices of the television broadcast industry. Any change in this definition would directly and dramatically affect the predicted contours of stations, and would have serious negative repercussions in the broadcast industry in this country. 7/

From a competitive standpoint, any change in the Grade B definition that reduces the area where stations provide Grade B service will disadvantage television broadcast stations vis à vis their cable and satellite competitors. Two courts have found that satellite carriers have been selling network signals illegally to subscribers who are not eligible. 8/ If Grade B service areas shrink as a result of a change in the Grade B definition, satellite carriers will import distant network affiliates into the newly defined "unserved areas", perpetuating the erosion in viewership of off-air, local stations that has already happened due to satellite carriers' illegal practices. The satellite delivery of

6/ The Commission should also recognize that broadcast stations have invested in translators and terrestrial satellite stations to provide a Grade B signal to areas that would otherwise receive a poor quality signal or that would be unserved. Consumers also have invested in equipment to receive these translators and terrestrial satellite stations. As the Copyright Act expressly requires, a station's main transmitting tower must therefore be considered along with its translators and terrestrial satellite stations. See 17 U.S.C. § 119(d)(2) (definition of a "network station").

7/ The Commission has routinely looked to Grade B contours to define stations' local service areas. For example, the Commission relies on Grade B service when deciding whether a television station's market for must-carry purposes should be modified to reflect its local service area more accurately. See *Report and Order in MM Docket No. 92-259*, 8 FCC Rcd 2965, 2977 (1993). In addition, the Commission recently decided that DTV allotments should be designed to replicate stations' NTSC Grade B contours. *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, 12 FCC Rcd 14588, (¶ 194) (April 21, 1997).

8/ *CBS, Inc., et al. v. PrimeTime 24 Joint Venture*, 9 F.Supp.2d 1333 (S.D. FL, May 13, 1998); *ABC, Inc. v. PrimeTime 24 Joint Venture*, 1998 WL 544286 (M.D. N.C., July 16, 1998).

distant network signals to areas where a Grade B signal is currently received will force local network stations to reduce their rates for advertising to account for the reduction in viewership. Reduced advertising revenues, in turn, will affect local stations' ability to provide quality local programming such as news, public affairs, political programming, emergency announcements, traffic and weather. Any reduction in advertising revenue affects a local television station because, unlike their cable and satellite competitors which have multiple revenue streams, free, off-air television stations rely on advertising revenues for 100 percent of their income. The Grade B definition should not be adjusted arbitrarily -- any changes will affect broadcast stations' ability to compete effectively.

Nor would it make sense to change the Grade B definition just for purposes of SHVA. It would be confusing, inconsistent and illogical for the Commission to preserve the current Grade B definition for some purposes, but not for SHVA. For example, the Commission's rules for DTV protect stations from interference from other stations within their Grade B contours -- an important protection for local stations, but one which becomes far less meaningful if a significant number of viewers tune in to a distant affiliate imported by satellite. It also would be inconsistent for the FCC to enforce network non-duplication rules that prohibit the importation of distant network stations against cable operators while, at the same time, opening up the possibility for satellite carriers to import distant signals into the local affiliate's protected viewing area.

III. THE R-6602 METHODOLOGY SHOULD BE REPLACED BY A MORE ACCURATE PREDICTIVE TOOL TO REDUCE THE NEED FOR ACTUAL MEASUREMENTS

The FCC's current methodology for predicting whether a household will receive Grade B service, called R-6602, is less accurate than other models that are now available. Thus, R-6602 should be retired to make room for models which account for local conditions. ^{9/} This will reduce current controversy over implementation of SHVA to a manageable level.

FBC is *not* urging the Commission to *replace* the actual measurement standard in SHVA with a predictive model. ^{10/} However, to stem the tide of requests for actual measurements -- which are costly and time-consuming -- FBC urges the Commission to adopt an improved method for predicting Grade B service. Even though the FCC would be endorsing an improved prediction method, parties would retain their statutory right to demand actual measurements, therefore, FCC action on this issue does not raise jurisdictional issues.

IV. THE COMMISSION SHOULD SEEK TO REDUCE THE INSTANCES OF ACTUAL MEASUREMENTS, WHILE PROMOTING IMPROVEMENTS IN MEASUREMENT TECHNIQUES

As the Commission recognized in the *NPRM*, any improvements in the predictive methodology will serve to reduce the demand for actual field

^{9/} For example, the FCC has endorsed the use of a terrain-based predictive model in other proceedings. Specifically, when it allocated spectrum for DTV stations, the FCC used the terrain-based Longley-Rice methodology to predict stations' service contours. The Longley-Rice methodology also was used by the parties to the Primestar/Netlink settlement to predict whether a given household received Grade B service.

^{10/} The Commission has recognized that "no Commission-endorsed model will preclude a party from using actual measurements at individual households." *NPRM* at ¶ 30.

measurements. 11/ Parties will not have the incentive to demand actual measurements if there is an accurate predictive model in place. Furthermore, when the accurate predictive model is combined with the “loser pays” provision in SHVA, then the instances of actual measurement will be dramatically reduced. Endorsement by the Commission of a predictive methodology is consistent with the SHVA, as any party retains the right under the Act to demand actual measurements. 12/

The FCC should also encourage innovations in techniques for actual field measurements to ensure that a consumer friendly methodology is being utilized. For example, the installation of rooftop antennas on subscribers’ roofs as part of the measurement process would have the dual benefit of producing accurate results and having an antenna available to subscribers to ensure that they can receive network service via satellite.

CONCLUSION

FBC urges the Commission to retain its current Grade B definition and adopt a more accurate prediction methodology to reduce the need for costly field measurements. These steps will serve the purposes of SHVA by preserving

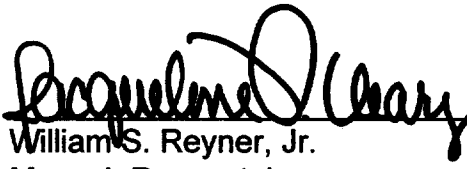
11/ *NPRM* at ¶ 41.

12/ 17 U.S.C. § 119(a)(8). Of course, as the FCC recognized in the *NPRM* (¶ 24), it will be up to the courts to decide what evidence is sufficient to meet a satellite carrier’s burden under SHVA. See 17 U.S.C. § 119(a)(5)(D).

consumers' ability to receive free local broadcast television service while protecting local stations from the importation of distant stations with duplicative programming.

Respectfully submitted,

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Dated: December 11, 1998